

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

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JOHN R. DAY,

Petitioner,

vs.

STATE OF OHIO, ET AL,

Respondents.  
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CASE NO. 1:09-CV-266

ORDER & OPINION

[Resolving Docs. No. [1](#), [11](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On February 5, 2009, Petitioner John R. Day filed a petition for a writ of habeas corpus pursuant to [28 U.S.C. § 2254](#). [Doc. [1](#).] With his petition, Day seeks relief from the judgment and sentence that an Ohio state court imposed following his conviction for murder, with a firearm specification, and felonious assault. [[Id. at 1](#).] On June 26, 2009, Respondents State of Ohio and Warden Richard Hall filed a motion to dismiss the petition, arguing that it is time-barred. [Doc. [11](#).] Petitioner Day did not respond to the motion to dismiss. The Court referred the matter to United States Magistrate Judge David S. Perelman pursuant to Local Rule 72.2. [Doc. [4](#).]

On July 10, 2009, Magistrate Judge Perelman issued a Report and Recommendation that this Court grant the Respondents' unopposed motion to dismiss because the § 2254 petition was not filed within the limitation period prescribed by [28 U.S.C. § 2244\(d\)\(1\)](#). [Doc. [12](#).] Magistrate Judge Perelman concluded that the Petitioner did not file this action until more than six years after the one year limitation period closed. Therefore, the Magistrate Judge recommends that the motion to dismiss be granted. Neither party objects to the Magistrate Judge's recommendation.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of

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those portions of a Report and Recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file any objections to a Report and Recommendation within ten days of service. [Id.](#) Failure to object within this time waives a party's right to appeal the magistrate judge's recommendation. [FED. R. CIV. P. 72\(a\)](#); *see also Thomas v. Arn*, 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate's report without review. *See Thomas*, 474 U.S. at 149. Moreover, having conducted its own review of the parties' briefs on the issue, the Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court **ADOPTS** in whole Magistrate Judge Perelman's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **DENIES** Petitioner Day's § 2254 motion and **GRANTS** the Respondent's motion to dismiss. Further, the Court certifies, pursuant to [28 U.S.C. § 1915\(a\)\(3\)](#), that an appeal from this decision could not be taken in good faith, and no basis exists upon which to issue a certificate of appealability. [28 U.S.C. § 2253\(c\)](#); [Fed. R. App. 22\(b\)](#).

IT IS SO ORDERED.

Dated: August 6, 2009

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE